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TMT

Law and Practice – Taiwan

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2018

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LAW AND PRACTICE:

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Contributed by Lee, Tsai & Partners **Authors:** Dr. Chung Teh Lee, Pei-Ching Ji, Elizabeth Pai, Luke Hung

Law and Practice

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Lee, Tsai & Partners have a 25-strong TMT team, with key offices in Taipei, Shanghai and Beijing. Its TMT work is broad-ranging and includes: advising multinational and local TMT companies on compliance with Taiwan laws and regulations; representing telecommunication companies in unfair competition issues; advising private equity firms in the acquisition of cable television businesses in Taiwan and the IPO of Cable TV system operators business; acting for technology leaders and start-ups in information technology, data privacy and protection and commercial matters; consulting on commercial, licensing and regulatory matters for global clients; representing multinational and local TMT companies in their disputes in Taiwan, including litigation, mediation and arbitration. The firm also have notable experience advising clients in media and entertainment sectors, with comprehensive legal services in relation to broadcasting rights, film-making, agency, B2B and business-to-consumer distribution, e-commerce, tax and finance issues, ISPs, distribution methods and marketing channels, international co-production treaties, and regulation compliance.

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1. General Structure of TMT Regulation and Ownership

1.1 Statutes, Laws and Legislation

The general overarching statute covering the broadcasting and telecommunications industry is the Fundamental Communications Act; the telecom, wireless, satellite, internet/broadband industries are all regulated by either the Telecommunications Act or other laws that are created pursuant to the authorisation stipulated in this Fundamental Communications Act. For broadcasting, the relevant statutes are the Radio and Television Act, the Cable Radio and Television Act and the Satellite Broadcasting Act, as well as other laws created pursuant to the authorisation stipulated in the Fundamental Communications Act.

1.2 Government Ministries, Regulatory Agencies and Privatised Entities
The sole central competent authority overseeing telecommunications and broadcasting related industries is the National Communications Commission (NCC).

1.3 Developing Rules and Adopting Policies
The NCC's rule-making procedure is summarised below:

- After a NCC department/bureau (Proposing Unit) finishes drafting a bill, the Proposing Unit convenes a public forum session to explain the bill. If the bill will significantly impact the rights of the people, there will be a formal hearing.
- The legal affairs group will: i) provide its opinion on the bill; ii) prepare an explanation of the bill and an assessment of its impact on the current laws and regulations; and iii) submit the bill to the Commissioners for a meeting to discuss and adopt a resolution on the bill.
- After the Commissioners have voted to pass the bill:
    - (a) For laws: The Proposing Unit will sign the bill and submit it to the Executive Yuan for review. After passing the Executive Yuan, the bill will be proposed to the Legislative Yuan.
    - (b) For the enforcement rules of a law: They will be promulgated once they are approved by the Executive Yuan.
    - (c) For legal orders, interpretative orders and ruling standards: The government will issue the announcement, and legal orders will be notified in advance.
    - (d) For an administrative policy: It will be issued directly to subordinate agencies/institutions.

The NCC's annual policy plan and draft budget proposal is reported to the Commissioners' meeting for confirmation and then adjusted pursuant to the budget approved by the Executive Yuan. Afterwards, it is submitted to the Legislative Yuan along with the central government's overall budget plan. Further adjustments will be made based on the results of the Legislative Yuan's review, and implementation follows after the approval of the Head Commissioner.

1.4 Ownership of Telecoms Media Technology Industries
The TMT industries are fully liberalised in Taiwan. Most of the past state-run entities have also since completed the privatisation process.

1.5 Limits on Participation
Entities may freely enter into the TMT industries to compete, but they must go through a series of reviews and obtain the necessary permits and licensing before commencing business operations so that only the truly competent and qualified operators may enter into the industry.

1.6 Restrictions on Foreign Ownership or Investment
The following restrictions apply in Taiwan:

- No foreign investment in OTA broadcasting or television.
- Restricted foreign investment in cable TV system operators, Type I telecommunications entities, domestic direct satellite television programming services, domestic satellite programming providers, and domestic programming providers for other channel types.
- Restricted Mainland China investment: So far, Mainland China investment in the Taiwan TMT industries is limited to only General Type II telecommunications Operations (ie, excludes Specialised Operations such as international simple resale, E.164/non-E.164 subscriber numbering telephony and network services) and those investors must be telecommunication businesses listed abroad or in Mainland China. Further, the total shareholding is restricted to 50% or below.

1.7 World Trade Organization Membership
Taiwan is a member of the World Trade Organization (WTO) (as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu").

Currently, Taiwan has indicated in advance that it is, in principle, supportive of the telecommunications part of the draft General Agreement on Trade in Services. However, confirmation of such support is still pending on the conclusion of multilateral talks on the issue.

1.8 Appellate Process
As the NCC is an administrative body, its decision may be appealed through the administrative litigation process, which starts with an appeal to the Executive Yuan according to the Administrative Appeal Act, and an appeal of the Executive Yuan's decision shall be made to the administrative court to commence administrative litigation according to the Act of Administrative Litigation Procedure.

1.9 Annual or Recurring Fees
Fees Applicable to Licensees
Some fees are paid annually, while others are paid during a licence application process. Please note that only the franchise/permit fees or licence application/renewal fees are mentioned below.

- Fixed network, land cabling and international underseas cable, Special Type II telecommunications business (international simple resale, E.164/non-E.164 subscriber numbering telephony and network service): 1% of annual turnover paid as a licence fee in May of every year.
- Satellite fixed communications and mobile communications: 0.5% of annual turnover paid as a licence fee in May of every year.

- Other Type II telecommunications business: For paid-in capital between TWD5 million to TWD500 million (USD166,000 to USD16,556,000), the annual licence fee is paid in tiers from TWD6,000 to TWD150,000 (USD200 to USD5,000). The fee must be paid in May of every year.
- 3G and 4G licence fees are determined based on the winning bid – the amount serves as the licence fee, which may be paid by the winner in a single lump sum or through instalments. The highest winning bid for the five types of 3G licences in the 2002 auction was TWD10.17 billion (USD337 million). For 4G, according to the results of the auction in the first wave of licences issued in 2013, the highest amount was TWD25.68 billion (USD850.5 million) for a 15*2MHz band. The highest amount of the second wave in 2015 was TWD6.95 billion (USD230 million) for a 20*2MHz band. There was a third wave in late 2017, and from the competent authority's announcement, the bottom bid for the licence permit was based on the bandwidth opened up (one 5*2MHz band will be about TWD1.9 billion to TWD2.2 billion (USD63 million to USD73 million). The highest amount of the third wave in 2017 was TWD10.935 billion (USD 370 million) for a 25*2 MHz band.
- OTA broadcasting and television licence fees: The following licence fees shall be paid to the competent authority during the application process:
  - (a) For those that obtained a licence through an auction or open tender, the licence fee for the term of the licence is based on the amount of the winning bid.
  - (b) For those that obtained a licence in ways other than through an auction or open tender, the fee for an OTA TV licence is TWD10 million (USD331,100), while the fee for radio and public television channels are TWD2,000 each (USD66).
- Cable TV licence fees: The following fees shall be paid by an applicant when applying for a licence from the competent authority:
  - (a) Licence fee: TWD50,000 (USD1,700) each, nine-year validity term.
  - (b) Licence renewal fee after expiration: TWD5,000 (USD165) each.
- Satellite broadcast TV or overseas satellite broadcast TV licence fees: Both the new licence fee and licence renewal fee is TWD5,000 (USD170).

Fees Applicable to Users of Spectrum

The competent authority also collects fees for spectrum usage. Spectrum usage fees are assessed and paid once annually. A user submits payment in July of every year. The calculation basis is laid out below:

- Mobile communications: (Usage fee per MHz bandwidth x allocated spectrum band x adjustment factor x distant region coverage factor x frequency adjustment factor x region factor). The usage fee per MHz for mobile communications, 3G and mobile broadband is currently TWD10,675,000 (USD353,000). The distant region coverage factor is calculated based on the village population covered by the high-speed cell station located in that area. Frequency adjustment is based on the frequencies used, and the region factor varies depending on the county/municipal region serviced.
- Fixed communications: Assessed based on the central frequencies used by each station, the allocated spectrum and the power of the radio transmitter. This is then further adjusted based on the purpose of the station, the nature of its business, the coverage area, the consumer price index and other factors.
- Satellite communications: Assessed based on the allocated spectrum for each station. This is then further adjusted based on the purpose of the station, the nature of its business, the coverage area, the consumer price index and other factors. However, no spectrum usage fee is assessed for receive-only satellite terrestrial stations.
- Broadcasting and TV: Assessed based on the type of station. The fee for a typical FM broadcast station is TWD1,800 (USD60) for every 100,000 persons covered; for a typical AM broadcast station, the fee is TWD1,000 (USD33) per 100,000 population. For all-region stations, the fee is TWD414,000 (USD13,700) per station. For digital OTA TV stations, the fee is TWD12 million (USD397,000) per station multiplied by an adjustment factor from 0.2 to 1.

2. Broadcasting/Media

2.1 Important Companies

The NCC's statistics as of February 2017 show that there are 5.24 million cable TV subscriber households in Taiwan, or about 61%, which makes cable television the primary source of broadcast information.

Cable Television

There are 65 cable television system operators (SOs) in Taiwan, but five multiple system operators (MSO) occupy nearly all of the cable television market. Those five MSOs are listed below in order of market share:

- China Network Systems (CNS), with 11 SOs under its control has a market share of 21.6%. Its paid-in capital is registered at TWD445,401,350 (about USD15 million).
- Kbro, with 12 SOs under its control has a market share of 21.57%. Its paid-in capital is registered at TWD19,937,687,700 (about USD660 million).
- Taiwan Broadband Communications (TBC), with four SOs under its control has a market share of 13.46%. Its paid-in capital is registered at TWD112,954,000 (about USD3.7 million).

- Taiwan Fixed Network, with five SOs under its control has a market share of 10.51%. Its paid-in capital is registered at TWD21 billion (about USD700 million).
- Taiwan Optical Platform, with six SOs under its control has a market share of 9.17%. Its paid-in capital is registered at TWD1,285,292,400 (about USD42.6 million). It is also the only MSO among the five listed with publicly available yearly revenue figures, and its 2016 revenue was TWD2,980,159,000 (about USD100 million).

OTA Television

The five OTA television operators in Taiwan are China Television Company (CTV), Chinese Television Service (CTS), Taiwan Television Enterprise (TTV), Formosa Television (FTV) and the Public Television Service Foundation (PTS). PTS is the public television broadcaster established under the Public Television Act.

2.2 Requirements for Obtaining a Licence/ Authorisation to Provide Services

Application For a Broadcasting Licence

General Requirements

- An applicant must be a company limited by shares established under Taiwan law or a foundation legal person.
- Paid-in capital or donation requirements: For establishing a broadcasting entity over all regions, the paid-in capital or donation requirement is TWD200 million (USD6.6 million); for regional broadcasters, the paid-in capital or donation requirement is TWD30 million (USD1 million); for neighbourhood FM broadcasting, the paid-in capital or donation requirement is TWD3 million (USD100,000), and for neighbourhood AM broadcasting, the paid-in capital or donation requirement is TWD9 million (USD300,000).
- Individuals who are not Taiwan nationals may not serve as a founder, shareholder, director or supervisor of a broadcasting entity.
- Shareholding and cross-media restrictions:
  - (a) Natural person shareholders or founders may not have any of the following: domicile and residence in Taiwan; the spouse or other individuals of certain relations with the shareholder or founder cannot hold more than 50% of the stock of the entity; and the shareholder or founder of a newspaper, OTA television or radio broadcasting entity cannot hold 10% or more of such entity's stock.
  - (b) Legal person shareholders or founders may not have any of the following: an unregistered entity in accordance with Taiwan law; a place of business or office in Taiwan; and a shareholder, founder or related party jointly holding at least 50% of the shares of a newspaper, OTA television or radio broadcasting entity (related party here refers to an entity with such shareholder or founder sitting as that entity's director or supervisor, or an entity in which such shareholder or founder has invested at least 20%).
- The same applicant may not submit two or more applications. An existing broadcasting entity may not apply to operate another broadcasting entity unless it has committed to return all its broadcasting permits and used frequencies.

Application Process

The competent authority will issue a public announcement regarding the broadcast permit and the application period. All-region or regional broadcasting entity applicants that pass the initial application review phase will then participate in an auction, while neighbourhood broadcasting entities will participate in a lottery. There is a bid bond of TWD33 million (USD1.1 million) at the time of application for all-region broadcasting applicants; the bond for regional broadcasting applicants is TWD5 million (USD16,500).

Depending on the type of broadcasting entity applicants must go through either:

- An auction: Single-round bids with no withdrawals or changes. The bidding price shall be in units of TWD1 million (USD33,100) for all-region applicants, and TWD100,000 (USD3,310) for regional applicants. The highest price above the bottom line wins the bid.
- A lottery: Eligible neighbourhood broadcasting entity applicants shall participate in a lottery per the competent authority's instructions. The competent authority will announce the winner.

The next step is obtaining the permit for establishment. Neighbourhood applicants will be issued one within 30 days of the competent authority's aforementioned announcement of the winners. All-region applicants and regional applicants will need to first pay a TWD20 million (USD660,000) and TWD3 million (USD100,000) performance bond respectively; the amounts are returned after obtaining the final broadcasting permit.

After obtaining the permit for establishment, the applicant may then apply to the competent authority for spectrum allocation, as well as the station construction permit pursuant to the Regulations on the Establishment of Radio and TV Broadcast Stations and the station permit after the construction is complete.

For the final broadcasting licence, those neighbourhood and regional broadcasting entities with establishment permits and all-region broadcasting entities that are not setting up its business over multiple phases may apply for the broadcasting licence within six months after obtaining the station permit. For all-region broadcasting entities that are set up over multiple phases, the timing will be within six months after the phase one station permit and after phase two is established.

The Application Fees

- Application review fee: The fee for each application is TWD150,000 (USD5,000), but for operating a single low-power FM or AM station, the fee is TWD50,000 (USD1,700). The review fee for a licence renewal is TWD50,000 (USD1,650), which is also reduced to TWD30,000 (USD1,000) for a single low-power FM or AM station.
- Licence fees: For those that obtained the licence through a public auction, the fee to be paid for the validity period of the licence is based on the amount of the bid placed by such entity. For those that obtained the licence through procedures other than a public auction, the fee is TWD2,000 (USD66). For renewal of expired licences, the fee is also TWD2,000 (USD66).
- Each issuance of the broadcasting licence or a renewed licence is TWD2,000 (USD66).

Application for OTA TV Channel Licence

General Requirements

- An applicant must be a company limited by shares established under Taiwan law or a foundation legal person. The minimum paid-in capital or donation requirement for a privately-operated TV channel is TWD300 million (USD10 million).
- The shareholding and cross-media restrictions are the same as those for obtaining a broadcasting licence.

The Application Process

For the establishment permit, an applicant must prepare and submit to the competent authority the application, business plan and other required documents.

For the station construction permit and the station permit, the applicant may apply for the construction permit within six months after obtaining the establishment permit, followed by the station permit after construction of the station is complete.

For the issuance of the television channel licence, the applicant may apply for the channel licence within six months after obtaining the station permit.

The Application Fees

- The application fee for new or renewal of expired licences is TWD150,000 (USD5,000).

- For those that obtained a television licence through a public auction, the fee to be paid for the validity period of the licence is based on the amount of the bid placed by such entity.
- For those that obtained the television licence through procedures other than the public auction, the fee is TWD10 million (USD330,000).
- For renewal of expired licences the fee is TWD10 million (USD330,000), but this is reduced to TWD2,000 (USD66) for public television stations.

Application for Cable TV SO Licence

General Requirements

- An applicant must be a company limited by shares established under Taiwan law. The minimum paid-in capital is TWD1.1 billion (USD36 million) multiplied by a household proportion factor announced by the Ministry of the Interior based on the district(s) where the applicant will be offering services. If the result is lower than TWD2 million (USD66,000) the minimum paid-in capital shall be set at TWD2 million.
- At least two thirds of the directors of the application must be Taiwan nationals; the same applies for supervisors. The chairman of the application SO must be a Taiwan national. Foreign shareholding shall be less than 60% of the SOs' outstanding shares for combined direct and indirect shareholding. Only foreign corporate persons may directly hold a SO's stock and such direct shareholding shall be less than 20% of the SO's outstanding shares.
- The application and the business plan needs to clearly state the planned area of operations. The service must be provided through digital technology, and the service area scope should cover at least 15% of the subscriber households of the district before the applicant SO may operate.
- The SO is responsible for its own headend equipment, but the SO may set up its system through leasing transmission equipment from Type I telecommunications entities or other SOs.

The Application Process

- For the establishment permit, the application along with the business plan must be submitted to the central competent authority.
- A performance bond is required before the establishment permit is issued. The amount is TWD110 million (USD3.6 million) multiplied by the household proportion factor based on the districts where the applicant will be offering its services; an amount less than TWD200,000 (USD6,600) will be deemed as TWD200,000. After the applicant has completed establishment for offering services to at least 15% of households in the administrative district and passed the competent authority's inspection, the applicant may apply for a return of half of the performance bond. The rest may be returned when the applicant's system services 50% or more of the households in the administrative district and passes the competent authority's inspection while the establishment permit is valid.
- For the licence, once the system service area covers at least 15% of the subscribers in the administrative district that the applicant is applying to provide service to, the applicant may request the NCC to conduct an inspection. After passing the inspection, the applicant may apply for the

licence from the competent authority. The applicant shall commence business operations within three months after obtaining the licence.
- The establishment permit is valid for three years and may be extended for up to two more. The applicant is expected to have its service cover up to at least 50% of the subscriber households in the administrative district and obtain the licence within this period; failure to do so will cause the competent authority to keep the performance bond and revoke the establishment permit.

The Application Fees
- The application review fee for the establishment permit, the establishment permit fee, and the licence fee are each TWD50,000 (USD1,700).
- The fee for a conversion from the establishment permit to the licence is TWD5,000 each (USD165).
- The inspection fee is TWD150,000 (USD5,000).
- For other application fees and details, please refer to the Fee Standards for the Cable TV Business Application announced by NCC.

Application for Satellite TV Licence
General Requirements
- Satellite TV broadcasting refers to the direct broadcasting of satellite TV programming and entities that provide satellite programming. An applicant must be a company limited by shares established under Taiwan law or a foundation legal person. The minimum paid-in capital or donation requirement for direct broadcasting is TWD200 million (USD6.6 million), and the amount for providing satellite programming is TWD50 million (USD1.7 million). For an applicant intending to engage in both, the minimum paid-in capital is also TWD200 million. Foreign shareholding must be less than 50% of the outstanding shares of an applicant.
- Operating a direct satellite broadcast abroad is limited to the branches of a lawfully established overseas satellite TV broadcasting entity. Operating a programming provider abroad is also limited to the branches or a distributor agent of a lawfully established overseas satellite TV broadcasting entity. The minimum paid-in capital is TWD20 million (USD660,000).

The Application Process
The application for either direct broadcasting or program provider services is submitted to the competent authority for review along with a business plan. The NCC will render a decision on the review within six months, with a possible extension of another six months.

After the competent authority has given permission for the applicant to engage in satellite broadcasting or overseas satellite broadcasting, the applicant shall complete the company establishment and registration within six months and submit those to the competent authority for the satellite broadcasting licence. If applying to be a (overseas) satellite programming provider, an application needs to be submitted for each channel, and licences will be issued for each channel separately.

The Application Fees
- The review fee (including the review of an application to re-issue an expired licence) is TWD50,000 (USD1,700).
- For the issuance of a new licence, re-issue of an expired licence or a lost licence, the fee is TWD5,000 (USD170).

Other Programming Providers
Other programming providers refer to those transmitting programming or advertising under a certain channel name to a public broadcasting platform through means other than satellite. The application requirements, procedures and fees for engaging in such work are identical to those for satellite programming providers.

2.3 Typical Term for a Licence/Authorisation to Provide Services

Broadcasting and OTA Television
The broadcasting or OTA television licence is valid for nine years.

Radio broadcasters seeking to renew the licence shall submit the request to the NCC between six months to one year before its expiry date. The request shall include the renewal application and the status of each review item. The licence will be renewed once the application passes the review committee. For OTA television the request shall also be made between six months to one year before expiry, while the documents to include are the relevant explanations and tables; the company registration; a list of directors, supervisors and shareholders; and the latest financial statements.

Cable SOs
The cable SO licence is valid for nine years.

The renewal process is similar to that for OTA channels, namely that the request shall be made between six months to one year before licence expiry, and the documents to include are the relevant explanations and tables; the company registration; a list of directors, supervisors and shareholders; and the latest financial statements. After review by the competent authority the local county/city government's review opinions, as well as the conclusions reached at a public hearing convened by the competent authority out of general public interest (ie, market competition, consumer rights, etc) will also be considered in deciding whether the licence will be renewed.

Satellite Broadcasting
The satellite TV broadcasting licence and the licence for the overseas satellite broadcasting branch or distributor agent are both valid for six years. The renewal request, along with the application and the business plan for the renewed licence, shall be submitted to the competent authority at least six months before the expiry date. The NCC will convene licence renewal advisory meetings to provide advice and examine the renewal request.

Other Programming Providers
The licence for other programming providers is valid for six years.

The renewal procedure and review process is the same as those for satellite programming providers.

2.4 Transfer of Licences/Authorisations to Other Entities

Broadcasting and OTA
Matters relating to spectrum administration, such as the radio station identification signals and radio frequency, are all under the control of the competent authority and may not be used or changed without permission. The spectrum used by radio or television broadcasting entities may not be leased, rented or transferred; the same applies to the construction permits or station licence issued to television broadcasting entities.

Cable SOs
The cable SO's establishment permit may not be leased, rented, transferred or pledged as a security to another.

For an SO to merge with, transfer its business to or receive business from another SO, the relevant application and business plan after the structural change must be submitted to the NCC for approval. The term of the licence will be based on the term remaining on the surviving entity; if the merging SOs will all be extinguished, the longest remaining validity term among the participants shall serve as the term of the licence of the new entity.

Satellite TV
A satellite TV broadcasting entity and a branch or distributor agent of an overseas satellite TV broadcasting entity may not allow another to operate its business, or lease, rent, transfer or pledge as a security to another its satellite broadcasting licence.

Other Programming Providers
The rules for other programming providers are the same as those for satellite TV broadcasting entities, thus they are also not allowed to lease, rent, transfer or pledge as a security to another its licence.

2.5 Spectrum Allocated

According to the Spectrum Allocation Table published by the Ministry of Transportation and Communications in February 2017, the following spectrum bands are set aside for broadcasting and television:

- AM broadcasting: 526.5-1606.5 kHz, 2-26 MHz;
- FM broadcasting: 88-108 MHz; and
- Television: 76-88, 174-216 MHz, 200, 400, 500, 700, 900 MHz, 2, 3.5, 4, 7, 12, 14 GHz.

2.6 Restrictions on Common Ownership

For Broadcasters and OTA Television
The common ownership restrictions on founders, shareholders or related parties of newspapers, OTA television stations or radio broadcasters holding the shares of other OTA television stations or radio broadcasters have been detailed above (see **2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services**) on the application for a broadcasting licence. The same restrictions apply to share transfer as well.

The same applicant may not have two ongoing applications. The following will be regarded as two or more applications from the same applicant: If there is an overlap between the directors or shareholders with more than 10% stake of one applicant with those of another applicant; and if one applicant holds 10% or more stake in another applicant, or if there is a control-subsidiary relationship between two applicants or with a third party.

From 3 May 2016 onwards, existing broadcaster entities who have received a licence can no longer apply to establish and operate a new broadcaster entity; the existing broadcaster must commit to return all broadcasting licences and the frequencies that it is using before sending a new application.

For Cable SOs
The law expressly requires that the total number of subscribers held by an SO, its related parties, and any SOs directly or indirectly in its control shall be less than one third of the total number of subscriber households in the country. There is, however, no restriction on common ownership with other media and telecommunications services entities.

For Satellite Broadcasters and Other Channel Providers
The law does not set any prohibitions on common ownership between satellite broadcasters and other media and telecommunications services entities.

Draft Prevention of and Multidimensional Protection Against Media Monopolies Law
The competent authorities are currently at work preparing a Prevention of and Multidimensional Protection Against Media Monopolies Law. This is intended to prohibit mergers

in the OTA industry, and mergers in the cable and satellite television industries that would give a combined entity over one-third of the market share. There will be a limit of five news and finance channels for a merged media entity, and large SOs with 20% or more market share may not merge with OTA operators, a national broadcaster, or run a news and finance channel or a nationally distributed daily newspaper business.

2.7 Content Requirements and Regulations

Broadcasting

News, public policy announcements, educational programming and public service announcements must occupy at least 45% of the airtime of a broadcasting station per day, and 50% for a television station. Domestically produced programming must take up at least 70% of the airtime for both broadcasting and television stations per day; domestically produced television shows must not be less than 50% of other similar programming aired during the 8pm-10pm block, and new shows must not be less than 40%.

In terms of content, there may not be any programming: against compulsory legal requirements or prohibitions; affecting the psychological health of children and young adults; or harmful to public order or morals. Entertainment programming should generally seek to promote Chinese culture, ethics, democracy, science and other educationally meaningful content.

For advertisements, the airtime may not take up more than 15% of the airtime of a programme, and it must be shown before and after the program instead of interrupting in the middle. For programming of half-hour in length, there may be one or two advertisement intermissions. Product placement advertisements and sponsored advertisements may be shown except during news programming and children's programming airtimes.

Cable TV SOs

SOs shall broadcast all OTA programming and advertisements without modification of its form, content or channel, as well as list them as "basic" channels. SOs shall also broadcast all its licensed programming from channel suppliers and advertisements in its entirety without modification to its form and content. All programming and advertisements shall either be in compliance with the Copyright Law or otherwise properly licensed according to the relevant regulations. There shall also be at least one local channel included to provide programming that is in the interests and needs of local residents.

Satellite Broadcasting

Programming providers producing news programming or other satellite programming designated by NCC shall set up a self-regulatory regime and independently receive complaints from viewers regarding the accuracy, balance and taste of the programming, while also periodically reporting such to the NCC and listing the information as public. Satellite TV broadcasting entities and branches, and distributors of foreign satellite TV broadcasting entities place their marks in programming or advertisements. Content rules of satellite TV programming are similar to those for broadcasting, namely: against compulsory legal requirements or prohibitions; not affecting the psychological health of children and young adults; not harmful to public order or morals; or not violating fact-finding principles in its news programs to the detriment of the public. When sponsored, information about the sponsor should appear both at the beginning and the end of the programming, and sponsored information may be inserted into sport or cultural programming as long as it is not disruptive. Advertisements put forth by a satellite TV broadcasting entity (or branches and distributors of a foreign satellite TV broadcasting entity) may not exceed one-sixth of the total runtime of a programme, and for each advertisement that is over three minutes long or presented in a similar fashion as other programming, the broadcast picture shall clearly indicate "advertising."

2.8 Difference in Regulations Applicable to Broadcasting Versus Cable

Television in the Radio and Television Act is defined as OTA TV, while cable falls under the Cable, Radio and Television Act. Although both statutes provide for review mechanisms, cable also has market share, cross-region operations and fee cap regulations.

As for multichannel video distribution platforms, currently IPTV is deemed as a type of municipal/local network business, which falls under the Telecommunications Act and regulations regarding fixed communications instead of the aforementioned broadcasting laws. There is currently no law for OTT. Due to the differences in statutes, the regulatory regime and the relevant restrictions are all different between cable and other multichannel video distribution platforms.

2.9 Transition from Analogue to Digital Broadcasting

Taiwan shut off all analogue OTA television broadcasting on 30 June 2012. According to the NCC's statistics in June 2017, the cable digitisation progress nationwide is 98.13%, and the NCC was strongly pushing to complete the cable digitisation process by the end of 2017. Rural areas, however, are still behind in progress, and it is estimated that some areas may take up to three more years before full digitisation.

For digital radio broadcasting, there was an attempt at a pilot program to apply for digital radio broadcasts in 2007, but interest was low. As such, radio broadcasts in Taiwan are still done through analogue transmission, and there is no policy in place to push for digital broadcasting.

2.10 Extent to Which Local Government Regulation is Pre-Empted

Broadcasting in Taiwan is primarily overseen by the central competent authorities, who also draft the relevant regulations. The only exception is that the law grants local governments the right to review the subscriber fees charged by SOs, and local governments may rule on and impose certain penalties regarding advertisement broadcastings and violations, as well as the content of subscriber boilerplate contracts.

3. Telecoms

3.1 Important Companies

By order of revenue in 2016, the largest five companies in the telecom industry are as follows:

- Chungwha Telecom (TWD229,911,428,000, or about USD7,600,000,000). In terms of the scope of its telecommunications business it is involved in fixed general telecommunications operations, mobile telephony operations (2G); 3G mobile communications operations; mobile broadband operations; and fixed satellite communications operations.
- Taiwan Mobile (TWD116,647,498,000, or about USD3,900,000,000). In terms of the scope of its telecommunications business it is involved in 2G, 3G and 4G mobile communications, and it also engages in fixed general telecommunications operations through its subsidiaries.
- Far EasTone Telecommunications (TWD94,344,266,000, or about USD3,100,000,000). In terms of the scope of its telecommunications business it is involved in 2G, 3G and 4G mobile communications, and it also engages in fixed general telecommunications operations through its subsidiaries.
- Asia Pacific Telecom (TWD14,153,429,000, or about USD470,000,000). In terms of the scope of its telecommunications business it is involved in fixed general telecommunications operations and 3G and 4G mobile communications.
- Taiwan Star Telecom (TWD9,831,018,000, or about USD330,000,000). In terms of the scope of its telecommunications business it is involved in 3G and 4G mobile communications.

Market-share information is not readily available for their respective fields.

3.2 Requirements for Obtaining a Licence/ Authorisation to Provide Services

Telecommunications entities in Taiwan are categorised under the Telecommunications Act as Type I and Type II entities. Type I entities include those that are involved in setting up telecommunications infrastructure fixtures and network backbones which serve to connect the sender and receiver of information; Type II refers to those entities that provide telecommunications services other than those provided by Type I entities.

Type I Telecommunications Licence

The current Type I telecommunications business in Taiwan include 2G, 3G and 4G mobile communications, fixed satellite communications and fixed network telecommunications business. More details regarding 2G, 3G and 4G mobile communications can be found in section **4 Wireless**, and more detail for fixed satellite communications can be found in section **5 Satellites**.

General Requirements

For those seeking to engage in fixed network telecommunications operations, which includes general network operations; municipal network operations; long-distance network operations; international network operations; and undersea cable lease, an entity must be a company limited by shares established under the Taiwan Company Act, the chairman must be a Taiwan national, and foreign shareholding limited to 49% for direct shareholding, and 60% for direct plus indirect shareholding.

Since 2008, there has also been a minimum paid-in capital requirement depending on the sector:

- General network operations: TWD6.4 billion (USD210 million).
- Municipal network operations: TWD4.8 billion (USD160 million) multiplied by the population weighting of the operation area (for example, one for entire area of Taiwan, 0.1146 for Taipei City according to the latest announcement by the NCC in 2017).
- Long-distance network operations and international network operations: TWD800 million (USD26.5 million).
- Undersea cable lease: TWD320 million (USD10.6 million).

The Application Process

An applicant shall turn in their application along with a business plan and other relevant documents to the NCC. After approval, the applicant will need to provide a performance bond within 60 days before the authority will issue the permit for establishment.

The validity of the permit for establishment depends on the sector as indicated below:

- General network operations: Five years.
- Municipal network operations, long-distance network operations, international network operations and undersea cable lease: Four years.
- Municipal and domestic long-distance cable lease: Two years.

After the above establishment permit is obtained and the company has completed the registration process, the applicant then applies to the NCC for the network set up permits. The validity period for the fixed telecommunications network setup permit is indicated as below:

- Four years for general network operations.
- Three years for all other business operations.

After the network set up permit is granted, the applicant can then construct the network per its business plan while the network set up permit is still valid. In the event the applicant fails to timely finish construction of the network, it may apply to the NCC for an extension of up to one year. As the network construction reaches a substantial degree of completion, the applicant must apply to the NCC for inspection. Once the applicant passes the inspection, it may finally apply for the Type I telecommunications licence from the NCC.

The Application Fees
The application review fees depend on the sector in question. The lowest is for reviewing a Type I application for engaging in municipal and domestic long-distance cable lease and is TWD110,000 (USD3,600), while the highest is for reviewing a Type I application for engaging in general network operations at TWD1.8 million (USD60,000). The details may be found in the Public Telecommunications Statutory Fee Charge Standards.

The inspection fee: The lowest is TWD77,000 (USD2,500) for inspecting municipal and domestic long-distance cable leases, while the highest is TWD310,000 (USD10,000) for inspections conducted for an applicant engaging in general network operations. The details are also set out in the Public Telecommunications Statutory Fee Charge Standards.

License fee: For establishing or setting up a telecommunications network, the fee is TWD3,500 each (USD116); TWD500 (USD16.6) for a licence to establish a single base station, TWD500 for a licence to operate each base station, and the fee for a single telecommunications licence is TWD3,500 (USD116).

The (Type I) franchise fee is 1% of the revenue for the fiscal year.

Type II Telecommunications Permit
General Requirements
There is no limitation on the type of company that may engage in Type II telecommunications operations, nor are there any minimum capital requirements or foreign shareholding restrictions. However, Mainland China investment is limited to only General Type II Telecommunications Operations (ie, does not include Specialised Operations, which are international simple resale, E.164/non-E.164 subscriber numbering telephony and network services).

The Application Process
A Type II applicant must turn in the application along with a business plan and other relevant documents to the NCC. A permit will be issued by the NCC after it has conducted a review of the materials submitted. If the application includes certain Specialised Operations the applicant shall complete the company registration and the establishment of the network system within six months after receipt of the permit; apply to the NCC for an inspection; and receive the licence and system structure chart after passing the inspection. For General Type II operations, no inspection is needed, and the applicant may directly apply to the NCC for the licence after it has completed the company registration and the establishment of the network system within six months after receipt of the permit.

The Application Fees
- The application review fee is TWD12,000 (USD400).
- The facility inspection fee is TWD16,000 (USD530) for a single facility site.
- The licence fee is TWD2,000 for each licence (USD66.3).
- A Type II franchise fee is 1% of the revenue for the fiscal year for Specialised Type II telecommunications operations. For a General Type II telecommunications operation, the fee ranges from TWD6,000 to TWD150,000 yearly (USD200-5,000) depending on actual revenue. Details can be found in the Type II Telecommunications Enterprise Franchise Fee Schedule.

For applicants involved in two or more of the above categories, the Type II franchise fee will be assessed separately.

3.3 Transfer of Telecoms Licences/Authorisations to Other Entities
Generally, for Type I entities engaged in fixed network telecommunications, the NCC's permit for establishment, the network set-up permits and the Type I licence may not be leased or transferred to another unless otherwise stipulated by law. If the entity attempts to rent out or transfer a part or the entirety of its business operations to another, the NCC will issue a fine and order rectification within a certain period of time; failure to rectify will result in the revocation of a Type I licence.

Type II licences also cannot be rented out or transferred to another. Should a telecommunications entity merge with another telecommunications entity or an entity that does not operate a Type II telecommunications business it must, along with the merging partner, submit the merger business plan to the NCC for approval prior to the merger. If approved, the surviving entity shall complete the business registration within three months after the merger and apply to the NCC for an amended Type II licence.

For mergers in the telecommunications industry, the Fair Trade Commission generally follows the same standards it applies when reviewing any other pre-merger filing. In particular for telecommunications, the Fair Trade Commission also looks at the "overall benefit to the economy" and puts more emphasis on:

- the resulting increase in efficiencies from the merger;
- the pro-competitive effect from the merger;
- provision of broader coverage and more variety of services; and
- the increase international competitiveness.

3.4 Regulations for Network-to-Network Interconnection and Access

The Regulations Governing Network Interconnection among Telecommunications Enterprises stipulates that Type I entities may not refuse another Type I entity's request to connect to its network unless it is technically unfeasible or may otherwise affect the safety of telecommunications facilities. The parties shall reach an agreement on interconnection within three months of the request; but the competent authority may be requested to make a decision if the parties fail to reach an agreement within that time. Amendments to a network interconnection agreement also follow the same model – a consensus must be reached within three months, and the competent authority may be petitioned to make a decision if the parties cannot do so within that time. Disputes over the competent authority's decision will proceed along administrative litigation procedures.

The network interconnection agreement must be submitted within one month to the competent authority for recordation after it has been executed. The competent authority has discretion on the extent of public disclosure of such network interconnection agreement; the parties may request the authority keep certain sections containing intellectual property confidential. No price information has been found in publicly disclosed network interconnection agreements so far.

3.5 Accounting, Functional and Legal Separation

Accounting separation is only required for Type I telecommunications entities, which means it must separately calculate profits and losses for each service item, and it may not engage in cross-subsidisation that interferes with fair competition.

3.6 Provisions for Access to Public and Private Land

Although the Telecommunications Act allows Type I entities to use both public and private lands and buildings in establishing its infrastructure and terminal facilities, a Type I entity should prioritise the use of public properties unless physical difficulties prevent it from doing so, and the authority overseeing those public properties may not unreasonably refuse the Type I entity from installing those facilities. In the event the installation will cause actual damage to the land or buildings, the Type I entity has a duty to mitigate its installation work and provide compensation for such actual damages.

3.7 Rules which Govern the Use of Telephone Numbers

The Telecommunications Act specifies that the competent authority has control over the planning and administration of the numbering codes, subscriber numbers and identification codes. This includes recalling or adjusting issued numbers and the collection of number usage fees.

Regarding number portability, Type I entities must provide number portability services and subscribers switching telecommunications providers may retain their original numbers. The competent authority has promulgated the Regulations Governing Number Portability for the specific regulation of number portability issues.

3.8 Regulation of Retail Tariff

The Telecommunications Act specifies that Type I entities are subject to tariff regulations in the form of a price cap (as announced periodically by the competent authority) based on the consumer price index. Also, Type I entities may not engage in anti-competitive cross-subsidisation in setting its prices.

Based on the above, a Type I entity that has been recognised as a dominant market player by the competent authority must submit its adjustments to the communications charges and monthly rents to the competent authority for approval 14 days before implementation and publicly disclose such adjustments on its website or through the media seven days prior to implementation after receiving the approval from the competent authority.

3.9 Rules to Promote Service in Underserved Areas

The Telecommunications Universal Services Regulations generally stipulates that everyone shall have access to essential telecommunications services at a reasonable cost; the competent authority has the power to require Type I telecommunications entities to provide certain service items to certain (most prominently uneconomic, or underserviced) areas, to which those entities may receive compensation for losses incurred in setting up and maintaining service in those areas. To that end, the Telecommunications Act stipulates the establishment of a Telecommunications Universal Service Fund to which the competent authority may order telecommunications entities to share and contribute to the fund.

3.10 Extent to Which Local Government Regulations of Telecom Service is Pre-Empted

Telecom services are solely regulated and authorised by the central government. There is no local regulation.

4. Wireless

4.1 Important Companies

In Taiwan, telecommunication entities generally overlap with entities in the wireless industry. Wireless services are further divided into the following three categories based on the technology standards used, and the largest entities in each category are:

- 2G mobile communications:
  - (a) Chunghwa Telecom;
  - (b) Taiwan Mobile; and
  - (c) Far EasTone.
- 3G mobile communications:
  - (a) Chunghwa Telecom;
  - (b) Taiwan Mobile;
  - (c) Taiwan Star Telecom;
  - (d) Asia Pacific Telecom; and
  - (e) Far EasTone.
- 4G mobile communications:
  - (a) Chunghwa Telecom;
  - (b) Taiwan Mobile;
  - (c) Taiwan Star Telecom;
  - (d) Asia Pacific Telecom; and
  - (e) Far EasTone.

Market share-wise, according to the competent authorities' statistics in June 2017, the top three wireless companies in Taiwan are:

- Chunghwa Telecom (37.24%);
- Taiwan Mobile (25.50%); and
- Far EasTone (25.29%).

4.2 General Requirements for Obtaining a Licence/Authorisation to Provide Wireless Services

Providing wireless service requires a licence from the competent authority. Since 2G services were shut down on 30 June 2017, the following represents an overview of the basics in obtaining a licence for providing 3G and/or 4G mobile communications wireless service:

General Requirements

For those seeking to engage in 3G and 4G mobile communications business operations, the entity must be a company limited by shares established under the Taiwan Company Act, a minimum paid-in capital of TWD6 billion (USD200 million), the chairman must be a Taiwan national, and foreign shareholding limited to 49% for direct shareholding, and 60% for direct plus indirect shareholding.

The Application Process

The application process has two phases and must be initiated during the periods announced by the Executive Yuan.

Phase 1 is a reviewing phase. NCC will review the application, the business plan and other qualification-related matters.

Phase 2 is a bidding phase. Those that pass Phase 1 become eligible bidders (For more regarding bidding see **4.5 Procedures to Identify and Assign Spectrum Among Competitors**). After winning the bid, an entity must either pay the full amount or an advance, plus guaranteeing both the remainder and interest. The competent authority will then issue the permit for establishment.

The winning bidder with the permit for establishment must then apply to the competent authority for the construction permit (based on the designated frequency band – 4G mobile communications require another application to the competent authority for frequency band designation).

After the winning bidder has successfully constructed 250 or more base stations, completed the relevant switching facilities and cable connection equipment, it shall request the competent authority to conduct a system inspection. After passing the inspection, the competent authority will issue a certification on passing the technical inspection, and the bidder may then apply for the licence itself.

The Application Fees

- The application review fee: For 3G, TWD200,000 (USD6,630); and for 4G TWD1 million (USD33,000).
- The inspection fees: For the 3G system inspection the fee is TWD125,000 (USD4,100), and the base station inspection fee is TWD6,000 per station (USD200). For 4G the system inspection fee is TWD150,000 (USD5,000), and the base station inspection fee is also TWD6,000 per station (USD200).
- As wireless provider services fall under Type I businesses, the licence fee charges are identical, namely: For establishing or setting up a telecommunications network the fee is TWD3,500 each (USD116), TWD500 (USD16.6) for a licence to establish a single base station, TWD500 for a licence for operating each base station, and the fee for a single telecommunications licence is TWD3,500 (USD116).
- Franchise fee: For 2G, 2% of the revenue for the fiscal year; and or 3G and 4G it is determined based on the winning bid.

4.3 Transfer of Wireless Licences/Authorisations to Provide Wireless Services

It is not possible for 2G, 3G or 4G licence to be rented out, leased or assigned. The same goes for the establishment permit, the construction permit and the station permits.

For mergers between wireless entities, the same merger rules for other businesses apply. However, given the disparity in market share occupied by the top three versus the rest, it is unlikely for the competent authority to approve of any mergers involving one of those companies.

4.4 Spectrum Allocation

The frequency bands for each of the five types of 3G mobile communications licences are as below:

- Licence A: 2x15 MHz (1920-1935 MHz-2110-2125 MHz)-5 MHz (1915-1920 MHz);
- Licence B: 2x10 MHz (1935-1945 MHz-2125-2135 MHz)-5 MHz (2010-2015 MHz);
- Licence C: 2x15 MHz (1945-1960 MHz-2135-2150 MHz)-5 MHz (2015-2020 MHz);
- Licence D: 2x15 MHz (1960-1975 MHz-2150-2165 MHz)-5 MHz (2020-2025 MHz); and
- Licence E: 2x20 MHz (825-845 MHz-870-890 MHz).

For 4G, it depends on the date the frequency band was made available:

- First wave in 2013: 700 MHz (uplink 703 MHz-748 MHz, downlink 758 MHz-803 MHz), 900 MHz (uplink 885 MHz-915 MHz, downlink 930 MHz-960 MHz), 1800 MHz (uplink 1710 MHz-1770 MHz, downlink 1805 MHz-1865 MHz)-
- Second wave in 2015: 2500 MHz and 2600 MHz (corresponding bands: 2500 MHz-2570 MHz and 2620 MHz-2690 MHz), 2500 MHz and 2600 MHz (single frequency block: 2570 MHz-2620 MHz); and
- Third wave in 2017: 1800 MHz (uplink 1770 MHz-1785 MHz, downlink 1865MHz-1880 MHz), 2100 MHz (uplink 1920 MHz-1980 MHz, downlink 2110 MHz-2170 MHz). The 2100 MHz band is currently being used by 3G services and will be shifted to 4G by the end of 2018.

4.5 Procedures to Identify and Assign Spectrum Among Competitors

3G Spectrum Auction

The 3G spectrum is divided into five parts among five licence types. The applicant must first pass the NCC's review of its application before becoming eligible to participate in the auction.

The auction is conducted open-style (every bidder's price is announced to all other bidders), simultaneously (all five licence types may be bid on in the same round), increasing prices, and over multiple rounds (the licence procedure is not decided in a single round of bids alone). Bidders are isolated from each other during the auction process.

Each bidder makes a single bid each round for a single licence type. The bidder with the highest price is temporarily deemed as the winning bidder, and such temporary winning bidder may not make another bid on any type in the next round unless it loses its front-running position due to a higher bid. The bidding price shall be in units of TWD1 million (USD33,000).

The auction process ends when no eligible bidders submit a bid for reasons other than a temporary forfeit. At the conclusion of the auction, the competent authority will announce the winning bidders and the prices.

4G Spectrum Auction

A 4G provider must also pass the NCC's review of its application before becoming an eligible bidder in an auction. The 4G auction is split into separate auctions on quantity and region, with the quantity auction first determining the winning bidder and the frequency band awarded, with the location auction then determining the winning bidder's frequency location.

Auction on quantity: The auction is simultaneous (a single target accepting all bids at the same time in each round), over multiple rounds, and with increasing prices. The auction runs from 9am-5pm, with the bottom bid for each round being 3% on top of the price of the temporary winning bid, and the top being 7%. The bidding price shall be in units of TWD5 million (USD166,000). If two consecutive rounds go by with none of the eligible bidders submitting a bid, the quantity auction is concluded and the price of the temporary winner in the last round for the bidding target shall serve as the winning bid price.

Auction on location: The winners of the quantity auction will submit their desired frequency locations at the start of the region auction, and the competent authority decides the frequency location for each winning bidder based on the following order:

- if there is no overlap in the frequency location submissions from all quantity auction winners, the frequency locations awarded will be as the winning bidders desired; and
- if there is only a single combination possible per the competent authority's announcement, then that combination shall determine the frequency location.

However, if the combination is unable to be used to determine the frequency location, then there shall be another single round of bids for each applicant to bid on each frequency location.

If two or more combinations are possible based on the highest combined total bid out of all quantity auction winning bidders, the competent authority will determine the final frequency location by lottery for each combination.

4.6 Unlicensed Spectrum Uses

There is a reserved band in Taiwan for citizens' band (CB) radio that does not require a licence or permit to use. The peak transmitter must be less than 5W and tune in any of the 40 channels from 26.965 MHz to 27.405 MHz save Channel 9, which is reserved for emergency use only. Due to the low transmission power, as long as the user's equipment is certified, the user does not need to obtain further licensing from the government to operate. If the user needs to erect a fixed antenna to operate the equipment, then a licence to set up a wireless station is still required from the competent authority.

4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

In April 2017, the Executive Yuan amended the Overview Table for Type I Telecommunications Business Operations, Scope, Timetable and Number of Entities for opening up the 1800 MHz and 2100 MHz bands for use by 4G service providers; it is expressly stipulated that before the spectrum auction that bidders are required to commit substantial effort in bringing about such 4G services after succeeding in the auction, and they must state in its business plan of its scheme in gradually increasing high-speed base stations in rural or distant areas. The system equipment development plan also requires current entities that succeed in the auction to show greater penetration and number of physical stations/facilities than its previously approved business plan. The above requirements are not specific to the new spectrum bands, as they are taken from the existing 4G service provider regulations obliging service-providers to explain its scheme for greater population coverage in its business plan submitted for obtaining an establishment permit.

4.8 Price Regulation for Mobile Services

Type I telecommunications entities who are also recognised as dominant market players must report any proposed changes to their rates, including the mobile communications monthly rent and pre-paid telephone cards, to the NCC for approval 14 days before the implementation date and publicly disclose such adjustments on its website or through the media seven days prior to implementation after receiving approval from the competent authority. These rate change proposals shall be accompanied by a detailed explanation of the change, including a cost-benefit analysis and a comparison between the old and the new rates.

There is currently no regulation capping international roaming rates. However, wireless service providers have reached a consensus on setting a warning threshold on international digital roaming rates for their subscribers (in principle around TWD5,000, or USD165).

4.9 Regulation of Government and Commercial Wireless Uses

Military-use wireless communications are generally not within the jurisdiction of the Telecommunications Act save for the following matters: land acquisition and use; wiring transplants; access through public communications networks; spectrum monitoring, frequency band adjustment; or requesting new equipment and handling of emergency communications. Other than the military uses described above, wireless communications for use by the government must still comply with the Telecommunications Act to obtain a licence from the competent authority. The application procedure for government use is no different than that followed by commercial entities as described above.

4.10 Extent to Which Local Government Regulation of Wireless Service is Pre-Empted

Wireless services are solely regulated and authorised by the central government. There is no local regulation.

5. Satellite

5.1 Important Changes

Satellite communications require a licence for legal operation in Taiwan. The licence is initially further split into two types:

- Satellite fixed communications (setting up a fixed earth station for leasing out earth station networks, satellite programming relay and other satellite network leasing); and
- Satellite mobile communications (setting up earth stations for global satellite mobile telephone voice/digital/pager communications).

Currently, there are only four satellite communications licence holders in Taiwan: Chunghwa Telecom, Teleport Access Services, Cosatech Satellite Services and Chinese Satellite Television Communications. Chunghwa Telecom is also the only entity engaging in satellite mobile communications operations. Their paid-in capital and revenues are as below (Cosatech and Chinese Satellite Television Communications do not publicly disclose their finances):

- Chungwha Telecom: Paid-in capital of TWD77,574,465,450 (USD2,500,000,000), and its 2016 overall revenue was TWD229,911,428,000, or about USD7,600,000,000).
- Chinese Satellite Television Communication: Paid-in capital of TWD450,000,000 (about USD15,000,000).
- Teleport Access Services: Paid-in capital of TWD428,041,400 (about USD14,000,000), and its 1H 2017 overall revenue was TWD523,789, or about USD17,000).

- Cosatech Satellite Services: Paid-in capital of TWD200,000,000 (about USD6,600,000)

Market share information is not readily available for entities.

5.2 General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service

An operator wishing to provide satellite communications services needs to submit an application, business plan, proof of financial status and other relevant required documents to the NCC to apply for establishment.

General Requirements

- The entity must be a company limited by shares established under the Taiwan Company Act with a minimum paid-in capital of TWD100 million (USD3.3 million) for satellite fixed communications, or a minimum paid-in capital of TWD500 million (USD16.5 million) for satellite mobile communications.
- The chairman must be a Taiwan national.
- Foreign shareholding limited to 49% for direct shareholding, and 60% for direct plus indirect shareholding.

The Application Process

Obtain the permit for establishment: An applicant may submit an application to the NCC to obtain a satellite communications licence in March and September of each year. After the competent authority has approved an application, the applicant shall remit a performance bond to the authority (TWD7.5 million [USD250,000] for satellite fixed communications, TWD25 million [USD830,000] for satellite mobile communications) within 60 days. The competent authority will issue the permit for establishment after receiving the amount. The applicant then has three years (with an extension of up to one year) to complete its set up and establishment process.

Obtain a satellite communications licence: After the applicant's satellite communications network has passed inspection by the competent authority (separate permits are required for setting up the satellite communications network, the earth stations and the spectrum band), the applicant may then apply to the competent authority for the satellite communications licence itself. Once the licence is issued, the performance bond will be returned to the applicant.

The Application Fees

- The application fee: TWD110,000 (USD3,600) for operating a satellite fixed communications business; TWD150,000 (USD5,000) for operating a satellite mobile communications business.
- The satellite communication licence fee (new, amendments, re-issues): TWD3,500 (USD115).
- The annual franchise fee: 0.5% of the revenue.

5.3 Transfer of Satellite Licences/Authorisations to Other Entities

The satellite communications permit for establishment; the satellite network set up permits; satellite fixed earth station set up permit; the earth station permit; the satellite communications licence and the provided spectrum band may not be leased, rented or transferred to another unless otherwise stipulated by law.

5.4 Spectrum Allocation to Satellite Service

The current spectrum bands that are allocated to satellite services are 1.6, 2.5, 4, 6, 12, 14, 19 and 29 GHz.

5.5 International Telecommunication Union Membership

Taiwan is not a member of the International Telecommunication Union (ITU).

5.6 Provision of Service by Foreign-Licensed Satellites

Foreign satellite mobile communications operators may apply for a licence or have a domestic entity act as its agent in providing satellite-based communications services in Taiwan.

The application process is the same as described in **5.2 General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service**. However, foreign operators are advised to take note of the restriction on the nationality of the chairman and the relevant foreign shareholding limits.

For a domestic agent partnership, a foreign operator may seek out a Taiwanese company with a licence for satellite communications or for international networking fixed communications to work with and apply for approval with the competent authority. For example, Inmarsat and Thuraya satellite phone operators are currently providing services in Taiwan through their partnerships with Chunghwa Telecom.

5.7 Milestone and Due Diligence Deadlines

Taiwan does not currently have the complete capability to launch satellites on its own or have set relevant laws regarding satellite launches. As such, there is currently no definite milestone or deadline regarding satellite construction and launch in national policy and law.

Chunghwa Telecom previously worked with Singtel in 1998 for the joint launch of the ST-1 satellite in providing commercial communications services. As the service lifetime of ST-1 was 12 years, another joint effort in 2011 led to the launch of the ST-2 satellite as a replacement for ST-1. The ST-2 satellite will remain in service for 15 years, and there is currently no information or plan regarding future satellite launches by satellite operators.

6. Internet/Broadband

6.1 Important Companies

Based on the publicly available 2016 financial reports, the largest internet/broadband service providers in Taiwan based on market share are as follows:

- Chunghwa Telecom: Primarily provides ADSL and FTTx broadband services, with over 4.47 million subscribers, or about 74.3% of the broadband market. HiNet, as its ISP unit, serves 4.17 million subscribers with about 68.4% market share.
- Kbro: Primarily provides cable modem and FTTx broadband services. Although Kbro does not disclose its finances and market share to the public, unofficial calculations put it among the top three internet service providers in Taiwan.
- Taiwan Mobile: Its subsidiary Taiwan Fixed Network is the No.4 multi-system operator provider in Taiwan market share and has a Type I licence for operating fixed telecommunications networks. Taiwan Mobile's ADSL/FTTx market share is about 1.3%, but if cable modem users are included, its market share grows to about 4.5%.
- Far EasTone Telecommunications: Its subsidiary New Century InfoComm Tech provides ADSL, FTTx and cable modem network services and had about a 2.3% market share in 2016.
- Asia Pacific Telecom: It is the only other entity in Taiwan with an island-round underground fibre-optic backbone fixed network other than Chunghwa Telecom. It primarily provides dedicated/enterprise connections (FiberLink/IP Transit) and VPN services.

6.2 Regulation of Voice-Over-IP Services

According to the classification of the National Communication Commission for Type II specialised telecommunications operations, if internet-based voice communications connect to a public telecommunications network node and access the Public Switched Telephone Network (PSTN), it is considered a Type II telecommunications operation that requires a licence from the Directorate General of Telecommunications of the Ministry of Transport and Communications. However, if the connection passes through the internet without accessing the public telecommunications system, those connections are not currently regulated.

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

Although the Regulations Governing Network Interconnections Among Telecommunications Enterprises regulate interconnections between telecommunications entities, those regulations do not cover interconnections over the internet. As a result, rules regarding IP-based interconnections between entities are entirely negotiated between parties.

6.4 Net Neutrality Requirements

Currently, Taiwan has no regulations against ISPs engaging in discriminatory traffic pricing and bandwidth or in violation of net neutrality principles. However, as Type I telecommunications entities must report price changes to the competent authority for approval, the competent authority could in practice protect neutrality and fairness via a review of pricing plans. For example, there has been an incident where the pricing proposal from a telecommunications provider revealed improper (discriminatory) bandwidth throttling, which caused the competent authority to reject its proposal due to the inappropriate impact to consumer rights and required the provider to rectify the situation.

6.5 Government Regulation of Internet/Broadband

The currently promulgated policy by the competent authority in 2017 on the promotion of broadband penetration can be summarised as below:

- Promote the establishment of mobile broadband infrastructure: Co-ordinate among government agencies (institutions) in opening up the construction of base stations to promote the development of mobile broadband infrastructure.
- Promotion of Fibre-to-the-Premises deployment: Co-ordination with local government authorities to make fibre optic equipment as one of the requirements to obtain a building usage licence to better promote broadband availability for a building's telecommunications equipment.
- Promotion of setting up broadband facilities in distant regions: This is an extension of the policy to continue pushing broadband availability in all areas so that all may enjoy broadband services at a reasonable price and quality. This is accompanied by a gradual increase in bandwidth so that all connections may be at 20Mbps or higher, even in rural and distant areas.

Regulations on promoting internet or broadband penetration may be found in section **3 Telecoms**, which also covers internet/broadband penetration.

6.6 Over-the-Top Internet-Based Providers

The current telecommunications and broadcasting related statutes do not specifically regulate over-the-top (OTT) providers, thus there is also currently no licensing requirements. The NCC has stated that it will continue to observe international trends and is generally taking a looser approach than the current regulation regime for traditional media.

6.7 Extent that Local Government Regulation of Internet/Broadband Service is Pre-Empted

Broadband services are solely regulated and authorised by the central government in Taiwan.

7. Privacy

7.1 Government Access to Private Communications

In the interests of national security or maintenance of public order, intelligence agencies and prosecutors may, upon permission from the courts, access private communications records and users of such communications, or monitor the general public's use of telecommunications facilities to send and store information. If there is a "special emergency situation" which require advance monitoring of another, the approval of the courts must be obtained within 24 hours.

7.2 Use of Encryption Technology

There is currently no law requiring TMT providers to use encryption technology; however, entities holding onto the personal information of individuals have a duty, according to the Personal Information Protection Act or the Trade Secrets Act, to keep such information in confidence.

On 27 April 2017, the Executive Yuan passed the draft Regulations on the Administration of Information Security, which requires all named key infrastructure providers (ie, physical or virtual assets, systems and networks that are critical to national security and the public interest) to meet a certain level of informational security and report the implementation status of their information security plans, which is subject to review by the government. If necessary, such security requirements may be expanded to private entities. It remains to be seen which TMT provider's systems and networks is considered "key infrastructure".

7.3 Liability of TMT Companies for Content Carried Over Their Networks

As per the Copyright Law, service providers (of various types) enjoy safe harbour exemptions under certain circumstances, such as:

- an ISP making no alteration or selection to the information that it transmits, and the user infringes the copyright of another;
- cache service providers immediately removing or preventing access to infringing information upon notification by the copyright holder that such information is infringing;
- data storage providers unaware of the infringing activities of its user(s); and
- search providers unaware of infringing information in the website that it provides links to.

When the provider is made aware of the aforementioned infringement, as long as it removes such infringing information or prevents access to it in good faith, the provider will not be held liable.

7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content

There have been recent efforts by some legislators to introduce into the Copyright Law the ability to block foreign infringing websites, under which copyright holders may petition a court to order an ISP to block the IP address or domain of a foreign infringing site, as well as forbid the TWNIC (Taiwan Network Information Center) from analysing that website. However, with public outcry of restriction of freedom on the internet, the proposals are yet to become part of the law.

7.5 Obligation of the TMT Companies to Retain Customer Data

Retention of Customer Data

The data retention requirements for telecom operators are mostly found under the Personal Information Protection Act. As the non-government agency, the collection of personal information other than certain sensitive items such as medical records, criminal records, etc may be conducted if the collection is done for a particular purpose and with the subject's consent. As per above regarding encryption, safety measures must be taken for the storage of personal information to avoid unauthorised access, deletion, disclosure or alteration.

Retention of Communications Records

The Telecommunications Act requires all telecom operators and their employees to keep in strict confidence information on the existence of telecommunications (between individuals/entities) and the contents of such communications. Only in the following special circumstances may a telecom operator be required by court order to disclose user information:

- required by a judicial authority, prosecutorial office or public safety institution for the investigation of evidence or the prosecution of a criminal matter;
- required by a governmental authority to exercise their state powers; and
- required by a public health safety-related agency/institution for emergency rescue purposes.

7.6 Prohibited of Unsolicited Communications

Generally, any non-government agency using collected personal information to conduct unsolicited marketing are required under the Personal Information Protection Act to halt the use of all personal information of the subject for marketing purposes once the subject has expressed that such communications are unwelcome and decide to opt out. The non-government agency must also disclose how the subject may opt out of such communications and pay all relevant expenses. The refusal of unsolicited marketing information above includes marketing that comes through email, messaging and telephone.

Other than the above, there is no other specific provision regarding regulation of unsolicited communications. The NCC is left with providing guidance to ISPs who also provide e-mail services handling and disposing of spam in accordance with the service agreement that they have entered into with their users.

8. Future

8.1 Status and Process of Convergence

The Liberalisation of the TMT Industry in Taiwan

The Cable, Radio and Television Act was passed to legalise "cable television" in 1993. In July 1996, the Telecommunications Act was promulgated and the telecommunications industry liberalised. The Main Telecommunications Bureau of the Ministry of Transportation and Communications was renamed to (state-owned) Chungwha Telecom. 2G mobile service commenced in the same year.

Examples of Recent Developments in TMT Convergence in Taiwan

After liberalisation, the TMT industry in Taiwan grew rapidly under private ownership. A few examples of convergence include: Taiwan Mobile Broadband integrating internet service, cable television and digital television content (from Taiwan Fixed Network, Taiwan Fixed Media and its subsidiary cable SOs); and Chunghwa Telecom obtaining an IPTV operating licence (as part of the licence granted by the Government Information Office to fixed network service providers seeking to engage in cross-industry cable TV broadcasting business via IPTV) in 2004 and is currently in the business of providing multichannel IPTV platform services in addition to all sorts of traditional communications services as described above.

8.2 Changes to Statutes, Laws or Legislation

The (Draft) Five Convergence Laws

The NCC completed a draft version of the Five Convergence Laws, which include the following:

- Regulations on the OTA Television Broadcasters and Channel Service Providers: This has dedicated sections on the oversight of OTA broadcasting and TV, direct satellite broadcasting and channel provider services.
- Regulations on the Administration of Cable Multichannel Platform Services: Focuses on the operation of IPTV service providers.
- The Telecommunications Administration Act: This takes a more open and relaxed oversight approach to the telecommunications industry compared to the previous highly regulated regime.
- Regulations on the Administration of Telecommunications Infrastructure and Resources: This regulates telecommunications networks with infrastructure characteristics, as well as promoting new constructions and technologies.
- The Digital Communications Transmission Act is used to maintain the flow, widespread use and open access of digital communications transmissions, as well as stipulate the obligations of digital communications service providers.

Among the five, the Telecommunications Administration Act and the Digital Communications Transmission Act have been approved at the NCC Commission Meeting and sent to the Legislative Yuan for review and discussion.

Media Antitrust Act

To protect the freedom of speech and prevent monopolies in the media, as well as promote multidimensional culture and the autonomy and professionalism in journalism, the NCC has prepared a draft Prevention of Monopolies in and Multidimensional Protection of the Media Act to specifically regulate the merger of media entities and clarify the circumstances where a merger is prohibited.

The NCC Commission Meeting decided in July 2017 to publish the draft law to the public for 60 days and collect opinions in a public hearing before going back and engaging in a detailed line-by-line review.

The Dispute Over the Proposed Amendments to The Three (Amended) Broadcasting and Telecommunications Laws

The Three Broadcasting and Telecommunications Laws implemented on 8 January 2016 did not include the amendments on loosening the restrictions on political party and military investments in the media, must-carry channels and tiered pricing, which were left incomplete due to the controversy involved. The NCC is researching a feasible plan and discussing the possibility of a continued move to amend the laws.

8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

There is currently no plan for changes to the current scheme where the NCC is responsible for all policy making and legislative amendments for the TMT industries.

8.4 Identification of Assignation of Additional Spectrum

The NCC announced in October 2017 the planned opening of additional spectrum for wireless TMT services including:

4G Mobile Broadband

The NCC will be conducting the third wave of licensing for 4G service providers this year in which a 150 MHz-band in the 1800 MHz and 2100 MHz spectrum will be opened up. The 2100 MHz spectrum area was originally used by 3G providers, and it will expire for them at the end of 2018. There will be an initial review before the auction, and so far, Chunghwa Telecom, Taiwan Mobile, Far EasTone, Asia Pacific Telecom and Taiwan Star have passed the review. The auction will proceed in two parts (as described in section **4 Wireless**), with the quantity bidding first and the location bidding two weeks later. The quantity bidding was held on 31 October 2017 and ended on 3 November 2017. Since there was no overlap in the frequency locations selected by the winning bidders (Chungwha Telecom, Taiwan Mobile, Far EasTone Telecommunications and Taiwan Star Telecom), the location bidding ended on 15 November 2017.

Issuance of (Radio) Broadcasting Licences

The 11th issuance of broadcasting licences was scheduled to take place at the end of 2017, with five regional mid-power FM broadcasting licences and 11 neighbourhood low-power broadcasting licences (10 FM, 1 AM) set to be issued, however, the NCC has since postponed the application date to February 2018. The interested parties for the regional broadcasting licences underwent an initial review before the auction, while the neighbourhood broadcasting licences went under an initial review before the lottery.

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